

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:98-CV-215-BO(2)

FILED

FEB 15 2000

David W. Daniel, Clerk
US District Court, EDNC
By K Dep. Clerk

ANTHONY N. WHITING)

Plaintiff,)

vs.)

WILLIAM W. WESLOWSKI)

d/b/a SKI'S AUTO WORLD PAINT)

and)

SKI'S AUTO-WORLD)

PAINT & BODY SHOP, INC.)

Defendants.)

DEFENDANTS' MOTIONS REQUESTING THAT
DEFENDANTS' FIRST SET OF ADMISSIONS
BE DEEMED AS ADMITTED & THAT
PLAINTIFF'S ACTION BE DISMISSED

NOW COMES Defendants, by and through their counsel of record, requesting that this Court find all admissions as admitted pursuant to Rule 36 of the Rules of Civil Procedure, and based on the admissions, dismiss Plaintiff's action pursuant to Rule 56 of the Rules of Civil Procedure, based on the following:

1. On December 27, 1999, Defendants served Plaintiff with "Defendants' First Set of Request of Admissions." Plaintiff had thirty-three days to respond to Defendants' request for admissions (thirty days plus three due to service by U.S. Mail). Thus, Plaintiff's time to respond to Defendants' request was January 31, 2000.

2. Defendants have never been served with a response to their requests for admissions.

3. The admissions, if admitted, would be a complete defense to Defendants' and would dispose of the Plaintiff's case.

4. A copy of the admissions is attached hereto as if fully incorporated herein.

5. There is no genuine issue as to any material fact, and the Defendants are entitled to a judgment as a matter of law.

WHEREFORE, Defendants pray that this Court:

1. Deem "Defendants' First Set of Request of Admissions" fully admitted.

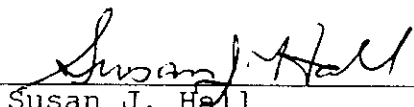
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2. Find that the admitted admissions dispose of Plaintiff's case in that the admissions deny Plaintiff's complained of acts.

3. Dismiss Plaintiff's action.

This the 13th day of February, 2000.



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FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
CIVIL ACTION NO. 5:98-CV-215-BO(2)

ANTHONY N. WHITING)
)
 Plaintiff,)
)
 vs.)
)
 WILLIAM W. WESLOWSKI) DEFENDANTS' FIRST
 d/b/a SKI'S AUTO WORLD PAINT) SET OF REQUEST OF ADMISSIONS
 and)
 SKI'S AUTO-WORLD)
 PAINT & BODY SHOP, INC.)
)
 Defendants.)

TO: Anthony Whiting
440 Hillsboro Street
Fayetteville, NC 28301

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Defendant serves the following Request of Admissions upon Plaintiff, and asks that these Admissions be answered separately and completely in writing, under oath, within the time permitted. Please provide your answer in the space provided after each question. Take notice that these Answers shall be deemed continuing pursuant to Rule 26, and supplemental answers should be provided as they arise.

1. You have been an employee of Defendant Ski's Auto World Paint & Body Shop, Inc., since December 1994 when you were hired as a painter's assistant.

_____ Admit _____ Deny

2. On March 5, 1996, you expressed an interest in the position of painter to your supervisor.

 Admit Deny

3. You were told by your supervisor that your supervisor spoke to Mr. Weslowski.

_____ Admit _____ Deny

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4. You were not present when your supervisor spoke to Mr. Weslowski.

_____ Admit _____ Deny

5. Terry Alfana worked for Defendants as a painter.

_____ Admit _____ Deny

6. Terry Alfana had seniority to you.

_____ Admit _____ Deny

7. Terry Alfana had more experience as a painter than you.

_____ Admit _____ Deny

8. Terry Alfana left Defendants' employment for one week to work at Coca-Cola.

_____ Admit _____ Deny

9. When Mr. Alfana left, you personally do not know if he had an arrangement with Mr. Weslowski that would have permitted him to return to his painter's position if the Coca-Cola job did now work out.

_____ Admit _____ Deny

10. Other employees had terminated Defendants' employment and returned to their same positions.

_____ Admit _____ Deny

11. You called Mr. Weslowski on March 19, 1996, without identifying yourself.

_____ Admit _____ Deny

12. You were fired on March 20, 1996.

_____ Admit _____ Deny

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13. At the time you were fired, Mr. Weslowski told you it was because you had not identified yourself over the telephone.

_____ Admit _____ Deny

14. Your job performance did not meet Defendants' legitimate expectations.

_____ Admit _____ Deny

15. Defendants did not seek a replacement for your position.

_____ Admit _____ Deny

16. You are not a member of a protected group.

_____ Admit _____ Deny

17. You did not apply for the job of painter.

_____ Admit _____ Deny

18. You were not qualified for the painter position.

_____ Admit _____ Deny

19. You were not rejected for the painter position because of your race.

_____ Admit _____ Deny

20. The painter position was not given to a person who had similar qualifications as you.

_____ Admit _____ Deny

21. The painter position was not given to a person who had lesser qualifications as you.

_____ Admit _____ Deny

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22. Defendants always ran a continuous advertisement in the local newspaper seeking new painters.

_____ Admit

_____ Deny

23. A trained professional has not diagnosed you with a neurosis, psychosis, chronic depression, phobia, or any type of severe and disabling emotional or mental condition.

_____ Admit

_____ Deny

24. You only assume that Defendants did not promote you because of your race.

_____ Admit

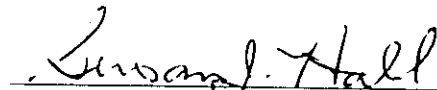
_____ Deny

25. Defendants have never acted in a discriminatory fashion against you before the termination.

_____ Admit

_____ Deny

This the 27th day of December, 1999.



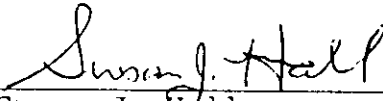
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CERTIFICATE OF SERVICE

This is to certify that I have this day served Anthony Whiting, 440 Hillsboro Street, Fayetteville, NC 28301, Plaintiff in the above action, by hand delivery or depositing in the United States mail a copy of the **DEFENDANT'S FIRST REQUEST FOR ADMISSIONS** in a properly addressed envelope with adequate postage thereon in the manner prescribed by Rule 5 of the Rules of Civil Procedure.

This the 27th day of December, 1999.



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